



RESOLUTION

APPROVING AN AGREEMENT BETWEEN THE CITY OF NASHUA AND THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION FOR THE CITY OF NASHUA, WITH THE HELP OF THE NASHUA REGIONAL PLANNING COMMISSION, TO MUNICIPALLY MANAGE THE RECONSTRUCTION AND WIDENING OF NH 101-A FROM CELINA AVENUE TO THE SOMERSET PLAZA ENTRANCE

CITY OF NASHUA

In the Year Two Thousand and Five

RESOLVED by the Board of Aldermen of the City of Nashua that the City of Nashua and the Division of Public Works are authorized to accept and appropriate funds from the New Hampshire Department of Transportation pursuant to approval of the attached "Agreement for Nashua State Project: 10136A, Federal Project: X-A000 (006)," for the reconstruction and widening of NH 101A from Celina Avenue to the Somerset Plaza Entrance. The City of Nashua will manage the project with the help of the Nashua Regional Planning Commission. Capital Project Account #751-3731 "Route 101A Widening/Reconstruction" has been established to accept and appropriate said funds.

**AGREEMENT
FOR

NASHUA
STATE PROJECT: 10136A
FEDERAL PROJECT: X-A000(006)**

THIS AGREEMENT made and entered into this _____ day of _____, ~~2004~~ 2005, between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, hereinafter called the "DEPARTMENT" and the City of NASHUA hereinafter called the "CITY."

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WITNESSETH that,

WHEREAS, the DEPARTMENT, and the CITY have determined that a project to reconstruct and widen NH Route 101A from Celina Avenue Intersection to ~~Somerset Plaza Entrance~~ in the City of NASHUA is an eligible project for funding under the Surface Transportation Program designated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and subsequent Transportation Equity Act for the 21st Century (TEA-21); and

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WHEREAS, the DEPARTMENT has established a Surface Transportation Program Project 10136A, X-A000(006), in the amount of Six million three hundred and twenty two thousand dollars (\$6,322,000.00) with eighty percent (80%) of that cost coming from Federal Highway funds, such amount being Five million fifty seven thousand and six hundred dollars (\$5,057,600.00), and the remaining twenty percent (20%) of that cost coming from the STATE, such amount being One million two hundred sixty four thousand and four hundred dollars (\$1,264,400.00); and

WHEREAS, the CITY desires to act as manager of said project; and

WHEREAS, the DEPARTMENT desires to cooperate with the CITY in accomplishing the project.

NOW, THEREFORE, in consideration of the above premises and in further consideration of the Agreements herein set forth by and between the parties hereto, it is mutually agreed as follows:

I. DUTIES AND RESPONSIBILITIES OF THE CITY:

- A. The CITY shall manage the design, environmental study, right-of-way acquisition, and construction of the project. This management is described in the current version of the DEPARTMENT's guidelines titled "New Hampshire Department of Transportation Process for Municipally Managed Surface Transportation Program Projects" and, by reference, is hereby made a part of this agreement.

NASHUA
STATE PROJECT: 10136A
FEDERAL PROJECT: X-A000(006)

- B. The CITY shall provide or cause to provide for the future maintenance of the project as it was originally constructed, including pavement markings, traffic signals, removal of snow, and to provide for full flow of traffic in a manner satisfactory to the State and Federal Highway Administration once the work under this AGREEMENT is completed. Engineering considerations are vital to proper maintenance and operation of these traffic control improvements, and future operational adjustments may be necessary due to changed traffic conditions, technical advances, or emergency situations. The CITY agrees that no changes will be made without prior approval of the State and Federal Highway Administration.
- C. The CITY agrees to maintain financial records pertinent to the development and construction of the project for up to three years beyond the completion of the construction, and to make the records available to the State and Federal Highway Administration upon request.
- D. The CITY shall comply with all Federal and State laws and rules, regulations, and policies as applicable under the Federal Aid Highway Program for Federal Aid Construction Contracts.
- E. The CITY agrees, obligates, and binds itself to prevent any encroachments within the right-of-way limitations and to prohibit the parking of any vehicles within the right-of-way except in designated parking areas shown on the plans. Encroachments include, but are not limited to signs occupying the highway right of way. The City will be responsible for identification of all signs that have been permitted to reside within the project limits. Owners of those permitted signs will be reimbursed the cost to move said signs if not otherwise precluded by the permit. Non-permitted signs within the existing right-of-way will be ordered removed. If the owner refuses to relocate said signs prior to the project advertising date, the City will again order the signs removed and if necessary remove said signs. Removal of signs within the right-of-way, whether permitted or not, is a requirement to utilize federal funds as part of this agreement.

NASHUA
STATE PROJECT: 10136A
FEDERAL PROJECT: X-A000(006)

- F. The CITY agrees to protect, defend, indemnify, exonerate and hold the DEPARTMENT harmless from and against any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the work contemplated by and/or performed under this Agreement, whether prior to, during, or any time after such work is being or has been performed, by either party hereto, including without limitation incidents involving bodily injury, death, property damage or any violation or alleged violation of any federal, state or local law or regulation, unless such suit, claim, liability, loss, penalty, cause of action or other obligation is caused solely by the negligence of the Department.
- G. Non-Discrimination:
1. The CITY agrees that it will comply with Title VI of the Civil Rights Act of 1964, 778 Stat. 252, 42 U.S.C. 2000d—2000d-4 (referred to as the ACT) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, US Department of Transportation, Subtitle A, Office of the Secretary, Part 21, “Nondiscrimination in Federally-Assisted Programs of The Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964” (referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives to the end that no person shall on the grounds of race, color, national origin, sex, age, creed, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the CITY receives Federal financial assistance extended by the State. This agreement obligates the CITY for the period during which Federal financial assistance is extended to the project.
 2. The CITY hereby gives assurance as required by subsection 21.7(a) of the REGULATIONS that it will promptly take any measures necessary to effectuate this agreement, including but not limited to the following specific assurances:
 - a. That each “program” and each “facility” as defined in subsections 21.23(e) and 21.23(b) of the REGULATIONS will be conducted or operated in compliance with all requirements of the REGULATIONS:
 - b. That the CITY shall insert the following notification in all solicitations for negotiated agreements and bids for work or material: *The CITY hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the ground of race, color, or national origin, sex, age, creed, ore disability in consideration for an award.*

NASHUA
STATE PROJECT: 10136A
FEDERAL PROJECT: X-A000(006)

c. That the CITY shall include the following assurance in each contract signed with a contractor, and each subcontract the prime contractor signs with a subcontractor; *The contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contract or such other remedy, as the recipient deems appropriate.*

3. The CITY shall insert a copy of the required provisions of federally assisted construction contracts in accordance with Executive Order 11246, Equal Employment Opportunity, and 41 CFR Part 60-4, Affirmative Action Requirements, in each contract entered into pursuant to this agreement. Required federal contract provisions can be obtained through the NHDOT Labor Compliance Office (271-6612) or Online at:
<http://webster.state.nh.us/dot/municipalhighways/tecmaq/pdf/FAPackage.pdf>

II DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT:

- A. The DEPARTMENT shall review the project's engineering plans, environmental documents, and contract documents applicable to the Federal Highway and State requirements for a federally-funded project and submit appropriate documentation to Federal Highway Administration to complete the NEPA process and receive Federal design approval.
- B. The DEPARTMENT shall, after receipt and approval of properly documented and CITY certified invoices, pay to the CITY one hundred percent (100%) of the total invoice costs representing the work that has been completed.
- C. The DEPARTMENT shall process the project for authorization through the Federal Highway Administration.

III. IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE DEPARTMENT AND THE CITY THAT:

- A. Federal Aid funds will not be available for construction prior to FY2008 as stipulated in the State's 10-Year Transportation Improvement Program.

NASHUA
STATE PROJECT: 10136A
FEDERAL PROJECT: X-A000(006)

- B. The CITY will not enter into any agreement for which the CITY intends to be reimbursed until such time that it receives written notice from the DEPARTMENT that the project has been authorized by the Federal Highway Administration or the CITY receives authorization to proceed under conditions of "Advanced Construction." Conditions of Advance Construction Authorization consist of:
1. Only direct project costs incurred in conformity with the Municipal Managed Process guidelines for Federal Aid Surface Transportation Program Projects shall qualify for 100% reimbursement. Costs incurred by the CITY to finance the Advanced Construction will not qualify for Reimbursement.
 2. Reimbursement is predicated on appropriation of Federal Aid funds at the current level (FY2002) of funding. Should Congress appropriate funds at a lower level than the current anticipated level of funding, then reimbursement may be delayed beyond the project's programmed schedule of funding authorization.
- C. Neither the DEPARTMENT, nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the CITY under this Agreement prior to the date of the DEPARTMENT'S written Notice To Proceed.
- D. The maximum amount of funds available for this project for reimbursement under this Agreement from the DEPARTMENT shall be in the amount of Six million three hundred twenty two thousand dollars (\$6,322,000.00) with eighty percent (80%) of that cost coming from Federal Highway funds, such amount being Five million fifty seven thousand and six hundred dollars (\$5,057,600.00), and the remaining twenty percent (20%) of that cost coming from the STATE, such amount being One million two hundred sixty four thousand and four hundred dollars (\$1,264,400.00); As the scope of the project is finalized or should the bids for the project exceed the amounts budgeted, the DEPARTMENT agrees to review project costs for consideration of additional funding. Neither the DEPARTMENT nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the CITY under this Agreement in excess of the above amounts unless additional funding is expressly authorized by the DEPARTMENT prior to the work being performed.
- E. The CITY may invoice the DEPARTMENT for incurred costs on a monthly basis and the DEPARTMENT will process these invoices for payment in an expeditious manner. NOTE: This provision does not apply if the project is authorized to proceed under provisions of Advanced Construction.

NASHUA
STATE PROJECT: 10136A
FEDERAL PROJECT: X-A000(006)

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

NEW HAMPSHIRE DEPARTMENT
OF TRANSPORTATION

CITY OF NASHUA

By: _____
Carol A. Murray
Commissioner

By: _____
The Honorable Bernard A. Streeter
Mayor, City of Nashua

Date: _____
Authorized to enter into Agreement
as approved by Governor and Council

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